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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 333.

THE BOARD OF SUPERVISORS OF CARROLL COUNTY,
PLAINTIFF IN ERROR,

vs.

DeWITT W. SMITH.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 6, 1881.

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1 United States District Court, Northern District of Mississippi.

Proceedings had in the district court of the United States for the northern district of Mississippi, begun and held for its June term, A. D. 1879, at the court-house, in Oxford, Miss., on to wit, the —— day of ——, 187—, and days subsequent thereto, in the following cause:

The Board of Supervisors of Carroll County, Plaintiff in Error.
vs.
D. Witt W. Smith, Defendant in Error.

H. A. Barr, att'y for pl'ff in error, and F. Johnston and C. B. Hawry, att'ys for def't in error.

1½ United States District Court, Northern District of Mississippi, June Term, A. D. 1879.

DeWitt W. Smith, Plaintiff,
vs.
The County of Carroll, L. Tuttle, Jr., President; F. M. Hanks, D. L. Arnold, Hillary Talbert, and P. H. Cain, members of the Board of Supervisors, Defendants.

D. Witt W. Smith, a citizen of the State of Illinois, plaintiff, by his attorneys, complains of the county of Carroll, L. Tuttle, Jr., president, and F. M. Hanks, D. L. Arnold, Hillary Talbert, and P. H. Cain, members of the board of supervisors of said county, citizens of the State of Mississippi, residing in the northern district thereof, that they render unto the said plaintiff the sum of fifteen ($15,000) thousand dollars, which to the plaintiff they owe, and from him unjustly detain. For that, whereas, to wit, on the 24th day of April, 1874, the said county of Carroll, one of the counties of the State of Mississippi, under and by virtue of the laws of said State, for value received, executed and delivered to the president and
2 directors of the Greenville, Columbus, and Birmingham
Railroad Company, a railroad company duly incorporated by the said State of Mississippi, a certain bond for the sum of one thousand dollars, signed by H. S. Hill, the then president of the board of supervisors of said county, and J. P. Marshal, clerk of said board, and sealed by their seals, and also attested and sealed with the seal of the Carroll county chancery court, which bond is in the words and figures following:

No. 2. United States of America, State of Mississippi. Carroll County Bond. July 1, 1873.

Know all men by these presents, that the county of Carroll, in the State of Mississippi, acknowledges itself indebted to the president and directors of the Greenville, Columbus, and Birmingham Railroad Company, or the bearer hereof, in the sum of one thousand dollars, which said sum the said county of Carroll, in the

State of Mississippi, promises to pay to the president and directors of the Greenville, Columbus, and Birmingham Railroad Company,
or the bearer, at —— National Bank of St. Louis, on or
3 before the first day of July, in the year of our Lord one
thousand eight hundred and ninety-three, with interest on
said sum at the rate of eight per centum per annum, payable semi-annually.

The above mentioned sum being a part of a subscription to the capital stock of the Greenvile, Columbus and Birmingham Railroad Company, authorized by the following styled acts of the State of Mississippi, viz.: An act entitled an act to incorporate the Arkansas City and Grenada Railroad Company, approved March 5th, A. D. 1872, and an act entitled: "An act to amend an act entitled an act to incorporate the Arkansas City and Grenada Railroad Company, approved March 5, 1872," approved March 4th, A. D. 1873.

In testimony whereof, the president of the board of supervisors of Carroll county and the clerk of said board have hereunto [SEAL.] set their hands and seals, and the said clerk has affixed the seal of his office, this the 24th day of April, anno Domini eighteen hundred and seventy-four.

(Signed) H. L. HILL, *Pres. Board Sup.* [L. S.]
J. P. MARSHALL, *Clerk.* [L. S.]

4 And appended to said bond were certain coupons, among
them the following, to wit, coupon No. 1, in the words and
figures following, to wit:

Bond No. 1.

The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars at the National Bank of St. Louis, on the first day of January, A. D. 1874, it being semi-annual interest on county bond to Greenville, Columbus & Birmingham Railroad Company for subscription.

(Signed) H. S. HILL,
$40. *Pres. Board Supervisors.*

And whereas, also, the said county also executed coupon No. 2 to said bond, of the like tenor and effect, and in like terms as the said coupon first set out in this declaration, whereby it promised to pay $40 semi-annual interest to the bearer on the 1st day of July, 1874.

And whereas, also, the said county executed coupon No. 3, of like tenor and effect, for the semi-annual interest of $40, payable on the first day of January, A. D. 1875.

5 And whereas, also, the said county executed coupon No. 4,
of like tenor and effect, for the semi-annual interest of $40,
payable on July 1, 1875.

And also executed coupon No. 5, of like tenor and effect, for the semi-annual interest of $40, payable on 1st day January, 1876.

And also executed coupon No. 6, of like tenor and effect, for the semi-annual interest of $40, payable on first day July, 1876.

And also executed coupon No. 7, of like tenor and effect, for the semi-annual interest of $40, payable on first day January, 1877.

And also executed coupon No. 8, of like tenor and effect, for the semi-annual interest of $40, payable on first day July, 1877.

And also executed coupon No. 9, of like tenor and effect, for the semi-annual interest of $40, payable on first day January, 1878.

6 And also executed coupon No. 10, of like tenor and effect, for the semi-annual interest of $40, payable on first day of July, 1878.

And also executed coupon No. 11, of like tenor and effect, for semi-annual interest of $40, payable on first day January, 1879.

And whereas, also, the said county executed another bond, No. 73, for like sum of $1,000, and of the same tenor and effect as the bonds already described, with certain coupons attached, among them the following, in the words and figures following, to wit:

Bond No. 73.

The county of Carroll, State of Mississippi, will pay to the bearer forty dollars, at National Bank of St. Louis, on the first day of January, A. D. 1874, it being semi-annual interest on county bond to Greenville, Columbus, and Birmingham Railroad Company for subscription.

$40. H. S. HILL,
Pres. Board Supervisors.

Said county also executed coupon No. 2, of like tenor and effect, for $40 semi-annual interest, payable July 1st, 1874.

7 And also coupon No. 3, of like tenor and effect, for $40.00, semi-annual interest, payable January 1, 1875.

And also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

And also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1st, 1876.

And also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1st, 1876.

And also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable January 1st, 1877.

And also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1877.

And also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

And also coupon No. 10, of like tenor and effect, semi-annual interest payable July 1, 1878, for $40.

8 And also coupon No. 11, of like tenor and effect, semi-annual interest payable January 1, 1878, for $40.

Said county of Carroll also executed a certain other bond, No. 74, of like tenor and tenor and effect, as the bonds already set out, for the sum of one thousand dollars, and executed certain coupons for interest, among them the following, described as follows, to wit:

Bond No. 74.

The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at the National Bank of St. Louis, on first day of January, 1874, it being semi-annual interest on bond to Greenville, Columbus, and Birmingham Railroad Company for subscription.

$40. (Signed) H. S. HILL,
Pres. Board Supervisors."

And the said county also executed coupon No. 2, of the tenor and effect, for $40, semi-annual interest, payable July 1, 1874.

And also coupon No. 3, of the same tenor and effect, for $40, semi-annual interest, payable January 1, 1875.

9 And also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable 1st day of July, 1875.

And also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable on 1st day January, 1876.

And also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable on 1st day July, 1876.

And also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable on 1st day January, 1877.

And also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable on 1st day July, 1877.

And also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable on 1st day January, 1878.

And also coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable on 1st day July, 1878.

10 And also coupon No. 11, of like tenor and effect, for $40, semi-annual interest, payable on 1st day of January, 1879.

And the said county of Carroll also executed a bond, No. 75, of like tenor and effect, for $1,000, with certain semi-annual coupons attached thereto, those sued on being as follows, to wit:

Bond 75.

County of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at the National Bank of St. Louis, on 1st day January, 1874, it being semi-annual interest on county bond, to Greenville, Columbus, and Birmingham Railroad Company for subscription.

$40 (Signed) H. S. HILL,
Pres. Board Supervisors.

And also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1874.

And also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1875.

11 And also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1873.

And also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1876.

And also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1876.

And also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1877.

And also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July [1], 1877.

And also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

And also coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1878.

12 And also coupon No, 11, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1879.

And whereas the said county executed also another bond, No. 76, of like tenor and effect, for $1,000, with certain coupons attached thereto, sued with this action as follows, viz.:

Bond No. 76.

The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at National Bank of St. Louis, on the first day of January, 1874, it being semi-annual interest on county bond to Greenville, Columbus, and Birmingham Railroad Company for subscription.

$40. (Signed) H. S. HILL,
Pres. Board Supervisors.

And also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1874.

And also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1875.

And also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

13 And also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1876.

And also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1876.

And also coupon No. 7, of like tenor and effect for $40, semi-annual interest, payable January 1, 1877.

And also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1877.

And also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

And also coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1878.

And also coupon No. 11, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1879.

14 Said county of Carroll also executed another bond, No. 77, of like tenor and effect, as those already described herein, for the sum of $1,000, with coupons attached, for the semi-annual interest, those sued on in this action being as follows, to wit:

Bond 77.

The county of Carroll, in the State of Mississippi, will pay the bearer forty dollars, at the National Bank of St. Louis, on the first day of January, A. D. 1874, it being semi-annual interest on county bond of Greenville, Columbus, and Birmingham Railroad Company for subscription.

$40 (Signed) H. S. HILL,
Pres. Board Supervisors.

And also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, payable on the 1st day of July, 1874.

And also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable on 1st day January, 1875.

And coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

And also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1876.

15 And also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July, 1876.

And also coupon 7, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1877.

And also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1877.

And also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

And also coupon No. 10 for $40, of like tenor and effect, semi-annual interest, payable July 1, 1878.

And also coupon No. 11 for $40, of like tenor and effect, semi-annual interest, payable July 1, 1879.

Said county also executed another bond, No. 78, for $1,000, of like tenor and effect as those already described herein, with coupons for the semi-annual interests attached; those sued on being as follows, to wit:

Bond No. 78.

16 The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at the National Bank of St. Louis, on first day of January, 1874, it being semi-annual interest on county bond to Greenville, Columbus, and Bermingham Railroad Company for subscription.

$40. (Signed) H. S. HILL,
Pres. Board Supervisors.

And also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1874.

And also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1875.

And also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

And also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1876.

And also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1876.

17 And also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1877.

And also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1877.

And also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

And also, coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1878.

And also coupon No. 11, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1879.

Said county of Carroll executed also another bond, No. 79, of like tenor and effect as those already described, for the sum of $1000, with coupons for the semi-annual interest attached, those sued on being as follows:

18 Bond 79.

The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at the National bank of St. Louis, on the first day of January, A. D. 1874, it being semi-anunal interest on county bond to Greenville, Columbus, and Birmingham Railroad Company for subscriptions.

$40. (Signed) H. S. HILL,
Pres. Board Supervisors.

Also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1874.

Also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1375.

Also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

Also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1876.

Also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1876.

19 Also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1879.

Also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

Also coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1878.

Also coupon No. 11, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1879.

Said county of Carroll also executed a bond, No. 80, of like tenor and effect of those already described, for $1,000, with coupons for the semi-annual interest attached, those sued on being as follows:

Bond No. 80.

The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at the National Bank of St. Louis, on the first
day January, A. D. 1874, it being semi-annual interest on
20 county bond to Greenville, Columbus and, Birmingham Railroad Company for subscription.

$40. (Signed) H. S. HILL,
Prest. Board of Supervisors.

And also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, due July 1, 1874.

Also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1875.

Also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

Also coupon No. 5, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1876.

Also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1876.

Also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1877.

Also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

21 Also coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1878.

Also coupon No. 11, of like tenor and effect, for $40, semi-annual interest, payable January 1st, 1879.

Plaintiff further avers that said county of Carroll executed another bond, No. 81, of like tenor and effect as those already described, except that it was for the sum of $500, with coupons of semi-annual interest attached, those sued on in this action being described as follows:

Bond No. 81.

The county of Carroll, in the State of Mississippi, will pay to the bearer twenty dollars, at the National Bank of St. Louis, on first day January, 1874, it being semi-annual interest on county bond to

Greenville, Columbus, and Birmingham Railroad Company for subscription.

(Signed) H. S. HILL,

$20. *Pres. Board Supervisors.*

Also coupon No. 2, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1874.

Also coupon No. 3, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1875.

22 Also coupon No. 4, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1875.

Also coupon No. 5, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1876.

Also coupon No. 6, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1876.

Also coupon No. 7, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1877.

Also coupon No. 9, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1878.

Also coupon No. 10, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1878.

Also coupon No. 11, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1879.

23 Said county of Carroll also executed another bond, No. 82, of like tenor and effect, with the bond last described, for $500, with coupons for the semi-annual interest attached, those coupons sued on being described as follows, to wit:

Bond No. 82.

The county of Carroll, in the State of Mississippi, will pay to the bearer twenty dollars, at the National Bank of St. Louis, on first day of January, A. D. 1874, it being semi-annual interest on county bond to Greenville, Columbus, and Birmingham Railroad Company for subscription.

$20. (Signed) H. S. HILL,

Pres. Board Supervisors.

And also coupon No. 2, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1874.

And also coupon No. 3, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1875.

And also coupon No. 4, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1875.

And also coupon No. 5, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1876.

And also coupon No. 6, of like tenor and effect, for $20, semi-annual interest; payable July 1st, 1876.

24 And also coupon No. 7, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1877.

Also coupon No. 9, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1878.

Also coupon No. 10, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1878.

Also coupon No. 11, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1879.

Said county of Carroll also executed another bond, No. 83, for $500, of the same tenor and effect as those already described, with coupons attached for the semi-annual interest. Said coupons sued on being described as follows, to wit:

Bond 83.

The county of Carroll, in the State of Mississippi, will pay to the bearer twenty dollars, at the National Bank of St. Louis, on the first
day of January, A. D. 1874, it being semi-annual interest on
25 county bond of Greenville, Columbus, and Birmingham Railroad Company for subscription.

$20. (Signed) H. S. HILL,
Pres. Board Supervisors.

Also coupon No. 2, of like tenor and effect, for $20, semi-annual interest, payable July1, 1874.

Also coupon No. 3, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1875.

Also coupon No. 4, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1875.

Also coupon No. 5, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1876.

Also coupon No. 6, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1876.

Also coupon No. 7, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1877.

Also coupon No. 9, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1878.

26 Also coupon No. 10, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1878.

Also coupon No. 11, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1878.

Said county of Carroll also executed another bond, No. 84, of the same tenor and effect as those already described in this declaration, for $500, with coupons attached for the semi-annual interest, those sued on being described as follows, to wit:

Bond No. 84.

The county of Carroll, in the State of Mississippi, will pay to the bearer twenty dollars, at the National Bank of St. Louis, on the first day of January, A. D. 1874, it being semi-annual interest on county bond and Greenville, Columbus, and Birmingham Railroad Company for subscription.

$20. (Signed) H. S. HILL,
Pres. Board Supervisors.

Also coupon No. 2, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1874.

27 Also coupon No. 3, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1875.

Also coupon No. 4, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1875.

Also coupon No. 5, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1876.

Also coupon No. 6, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1876.

Also coupon No. 7, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1877.

Also coupon No. 9, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1878.

Also coupon No. 10, of like tenor and effect, for $20, semi-annual interest, payable July 1, 1878.

And also coupon No. 11, of like tenor and effect, for $20, semi-annual interest, payable January 1, 1879.

28 Said county of Carroll also executed another bond, No. 2, of like tenor and effect as those last herein described, except that it was for the sum of one thousand dollars, with coupons for the semi-annual interest attached, those sued on in this action being described as follows:

Bond No. 2.

The county of Carroll, in the State of Mississippi, will pay to the bearer forty dollars, at the National Bank of St. Louis, on first day January, A. D. 1874, it being semi-annual interest on county bond to Greenville, Columbus, and Birmingham Railroad Company for subscription.

(Signed) H. S. HILL,
$40. *Pres. Board Supervisors.*

Also coupon No. 2, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1874.

Also coupon No. 3, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1875.

Also coupon No. 4, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1875.

Also coupon No. 5, of like tenor and effect, for $40, semi-
29 annual interest, payable January 1, 1876.

Also coupon No. 6, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1876.

Also coupon No. 7, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1877.

Also coupon No. 8, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1877.

Also coupon No. 9, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1878.

Also coupon No. 10, of like tenor and effect, for $40, semi-annual interest, payable July 1, 1878.

Also coupon No. 11, of like tenor and effect, for $40, semi-annual interest, payable January 1, 1879.

Plaintiff avers that said defendant, the said County of Carroll, delivered said bonds and coupons to said railroad company for value, and that afterwards, the plaintiff, for a valuable consideration, became the owner and holder thereof before maturity, and is the in-
nocent purchaser for value without notice, &c. By means
30 whereof the said county of Carroll became liable to pay to
plaintiff the said principal sums of money specified in said bonds, at the date of the maturity of said bond, and became liable to pay to plaintiff the said several sums of interest specified in said coupons herein described, all of which are now due and unpaid. The original of said coupons are herewith filed as a part hereof.

Said county, notwithstanding this legal liability, and although often requested, has failed to pay plaintiff said several sums of money specified in said interest coupons, whereby the plaintiff say he has been damaged in the sum of fifteen thousand dollars, and he therefore brings this suit.

FRANK JOHNSON,
CHAS. B. HAWRY,
Attorneys for Plaintiff.

Filed April 28th, 1879, and summon issued.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the same day, a summon was sued in said case, in the words and figures following, to wit:

31 UNITED STATES OF AMERICA,
Northern District of Mississippi:

This action is brought to recover on bonds and coupons of the said county, in favor of the Greenville, Columbus, and Birmingham R. R. Co., held by pl'ff, and not paid by def'ts to pl'ff. Damages, $15,000.00.

G. R. HILL, *Clerk.*

The President of the United States, to the marshal of the northern district of Mississippi, Greeting:

We command you, without delay, to summon the County of Carroll, L. Tuttle, Jr., president, F. M. Hanks, D. L. Arnold, Hillery Talbert, and R. H. Cain, members of the board of supervisors, citizens of the State of Mississippi, residing in the northern district thereof, that they be and appear before the district court of the United States, to be held in the town of Oxford, for the said northern district of Mississippi, on the first Monday of June next, to answer the complaint of DeWitt W. Smith, citizen of the State of Ill., and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default, and have then and there this writ.

Witness the Honorable R. A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford, the first Monday of Dec., A. D. 1878, and 103d year of the Independence of the United States.

Issued the 28th day of April, 1879.

[L. S.] G. R. HILL, *Clerk.*

32 Upon the foregoing writ is the following endorsements made by the marshal as his return, &c., to wit:

Executed the within writ by handing to the within named L. Tuttle, Jr., president, a true copy of the same, May 24th, 1879, and by handing to the within named Hillory Talbert, personally, a true copy of the same 23d May, 1879; handed to Miss Sallie Hanks, a person over the age of 16 years, and a member of the family and sister of F. M. Hanks, she being then and there willing to receive it, a copy of the same, the within named F. M. Hanks not being found in my district after diligent search, May 24th, 1879; also by handing to Mrs. E. A. Cain, wife of P. H. Cain, a true copy of the same, May 23, 1879, she being of the age of 16 years, and being then and there willing to receive the same, the within named P. H. Cain not [being] found in my district after diligent search, and upon the within named D. L. Arnold, personally, by handing to him in person a true copy of this writ, May 24th, 1879.

J. L. MORPHIS, *U. S. M.*
By B. P. SCRUGGS, *D. M.*

Marshal's Cost.

33	175, at 6c.	$10 50
	5 copies, 50c.	2 50
	5 services, $2.00	10 00
	Ex't. and ret.	50
		$23 50

And afterwards, to wit, on the 4th day of June, 1879, certain pleas were interposed and filed, in the words and figures following, to wit:

Pleas.

The United States of America, Northern District of Mississippi.
District Court at Oxford, June Term, 1879.

DEWITT W. SMITH
vs. } 3312.
BOARD OF SUPERVISORS OF CARROLL COUNTY.

And the said defendant, by attorney, comes and says *actio non*, because it says that said bonds and coupons in said declaration mentioned were issued for a subscription to the capital stock of the Greenville, Columbus, and Birmingham Railroad Company, a corporation in this State. And said defendant says that the said stock was so subscribed for, and the said bonds and coupons were so issued without the assent of two-thirds of the qualified voters 34 of said county of Carroll. And this the said defendant is ready to verify. Wherefore it prays judgment, &c.

H. A. BARR,
Att'y for Def't.

2.

And for further plea in this behalf said defendant, by attorney, says *actio non*, because it says that on the 3d day of March, 1873, on the application of the president of the Greenville, Columbus, and Birmingham Railroad Company, a corporation in this State, the Board of Supervisors of the county of Carroll, ordered a special election to be held in said county on the 1st day of April, 1873, at which the question of subscription, or no subscription, by said county to the capital stock of said railroad company was to be submitted to the qualified voters of said county. And said defendant avers that said election was accordingly held, and said defendant avers that on the 1st day of April, 1873, the names of 3,129 registered as voters were on the registration books of said county, and there were in fact on the 1st day of April, 1873, three thousand one hundred and twenty-nine qualified voters in said county, 35 but that only 1,280 of said voters voted at said election, of whom 918 voted in favor of the proposition to subscribe for said stock and 362 voted against it, as fully appears by the returns of the 3 registrars of said county, filed with the clerk of said Board of Supervisors of said county. And said defendant says that, nothwithstanding the refusal of two-thirds of the qualified voters of said county to vote in favor of subscription for stock, the then Board of Supervisors of said county, in violation of their duty and the trusts reposed in them, and in violation of the constitution of the State of Mississippi, subscribed to the capital stock of said railroad company, and issued the bonds and coupons in the declaration mentioned in fact for said subscription for said capital stock in said railroad company without any statement or recital in said

said bonds, that two-thirds of the qualified voters of said county had assented thereto. And this, the said defendant, is ready to verify. Wherefore it prays judgment, &c.

H. A. BARR, *Att'y for Def't.*

Filed 4 June, 1879. G. R. HILL, *Clerk.*

36 And afterwards, to wit, on the 19th day of June, A. D. 1879, a replication and demurrer was filed herein to defendant's pleas above pleaded, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Mississippi:*

District Court at Oxford, June Term, A. D. 1879.

DEWITT W. SMITH, Plaintiff,
vs.
BOARD OF SUPERVISORS OF CARROLL COUNTY.

Replication.

And said plaintiff, for replication to the plea of the defendant, the Board of Supervisors of Carroll County, first above pleaded, saith that the said plaintiff by reason of anything by the said defendant in said plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against said defendant, because he says that said bonds and coupon in said declaration mentioned were issued for a subscription to the capital stock of the Greenville, Columbus, and Birmingham R. R. Company, a corporation in this State.

37 And plaintiff says that said stock was so subscribed for, and said bonds and coupons were so issued with the assent and concurrence of two-thirds of the qualified voters of said county of Carroll, and this the said plaintiff prays may be inquired of by the county.

F. JOHNSON,
CHAS. B. HAWRY,
Att'ys for Plaintiff.

And said plaintiff, for further replication to the plea by the said defendant first above pleaded, says the said defendant ought not to be admitted or received to plead the plea by it above pleaded, because he says that on the third day of March, A. D. 1873, on the application of the president of the Greenville, Columbus, and Birmingham R. R. Company, a corporation in this State, the Board of Supervisors of the County of Carroll ordered a special election to be held in said county on the 1st day of April, A. D. 1873, at which the question of subscription or no subscription by said county to the capital stock of said R. R. company was to be submitted to the voters of said county. And said plaintiff says said election was accordingly held, and said Board of Supervisors, subsequent to the said

election, to wit, at its next meeting thereafter, duly declared
38 the said subscription to have [been] carried by a two-thirds vote of the qualified voters of said county. And thereupon the bonds and coupons in the declaration mentioned were duly issued in pursuance of the decision of said defendant, the said Board of Supervisors, and delivered to the Greenville, Columbus, and Birmingham R. R. Company for the stock in said company, and afterwards and before the maturity of said bonds and coupons were purchased by the plaintiff in the market for value, without notice, and said plaintiff was, at the commencement of this suit, and is now, the *bona fide* purchaser and innocent holder of the bonds and coupons in said declaration mentioned, for value, without notice.

Wherefore he prays judgment, if the said defendant ought to be admitted or received to its said plea, contrary to its decision with respect to said election, and to its assurance and acknowledgment of the legality of the said bonds and coupons.

F. JOHNSON,
CHAS. B. HAWRY,
Att'ys for Plaintiff.

2. *Demurrer.*

And said plaintiff, as to the plea of the said defendant sec-
39 ondly above pleaded, says *precludi non*, because he says that the said plea is not sufficient in law, and therefore he demurs to the same, and for cause of demurrer assigns—

1. That said plea contains no matter or thing whereby the plaintiff's right to recover is barred or precluded.
2. The plea shows a valid election and a valid subscription in and of the Greenville, Columbus, and Birmingham R. R. Company, and as subscriptions on the part of Carroll county to the capital stock of said railroad company, and alleges nothing in avoidance.
3. The constitution of the State of Mississippi does not require the assent of two-thirds of the registered voters of the said county to the issuance of the obligation sued on, and the plea on its face discloses nothing in bar of the validity of the bonds described in the declaration and the coupons thereto attached, and also described in the declaration.
4. Said plea is otherwise uncertain and insufficient.

Wherefore plaintiff prays judgment.

F. JOHNSON,
CHAS. B. HAWRY,
Attorneys for Plaintiff.

Filed by leave of court and consent of def't June 19th, 1879.
G. R. HILL, *Clerk.*

40 And afterwards, to wit, on the 12th day of July, the same being a day of the June term of said court, A. D. 1879, upon the foregoing demurrer the following order was made, to wit:

Order on Demurrer.

DEWITT W. SMITH
vs. } 3312.
BOARD OF SUPERVISORS OF CARROLL COUNTY.

Came the parties, by their attorneys, and came on to be heard the demurrer interposed herein to the plea of the defendant, and after argument of attorneys, and due consideration being had by the court, it is considered and so ordered by the court that said demurrer be, and the same is hereby, sustained, and that the defendant have leave to plead order as of this term.

And afterwards, to wit, on the 17th day of Nov., 1879, the following further 3d and 4th pleas were filed in said cause, to wit:

The United States of America, Northern District of Mississippi. District Court at Oxford. June Term, 1879.

41 3d Plea. No. 3.

DEWITT W. SMITH
vs. } 3312.
BOARD OF SUPERVISORS OF CARROLL COUNTY.

And the said defendant comes, and for plea in this behalf says *actio non*, because it says that the Board of Supervisors of Carroll County were authorized by an act of the Legislature of the State of Mississippi to subscribe for capital stock in the Greenville, Columbus, & Birmingham Railroad Company, for and in behalf of the said county of Carroll, and issue bonds of said county therefor only upon condition that two-thirds of the qualified voters of said county should vote in favor of such subscription, and the said Board of Supervisors did order a special election to be held in said county on the 1st day April, 1873, at which the question of "subscription or no subscription" by said county to the capital stock of said railroad company was to be submitted to the qualified voters of said county; and said defendant avers that such election was on that day accordingly held; and said defendant further avers that on the 1st
42 day April, 1873, the names of 3,129 registered voters were
on the registration books of said county; and there were in fact on the said 1st day of April, 1873, three thousand one hundred and twenty-nine qualified voters in said county, but that only 1,280 of said voters voted at said election, of whom only 918 voted in favor of the said proposition to subscribe for said stock, and 362 voted against it, as fully appears by the returns of the three registers of said county, filed and deposited with the clerk of the said Board of Supervisors of said county, and at all times open to the inspection of all persons in the public office of the clerk of the chancery court of said county; and said defendant avers that the said registration of voters of said county was a book of record, deposited and kept in the public office of the clerk of the chancery

court of said county as a record book, and open for inspection to all persons, and exhibited the fact that there were 3,129 registered voters in said county at the time of said election. And said defendant says that, notwithstanding the refusal of two-thirds of the qualified voters of said county to vote in favor of said proposition,
43 the then Board of Supervisors of said county, in violation of their duty and trusts reposed in them, and in violation of the laws and constitution of the State of Mississippi, subscribed to the capital stock of said railroad company, and issued the bonds and coupons in the declaration mentioned in fact for a subscription for said capital stock in said railroad company; and this the said defendant is ready to verify. Wherefore it prays judgment, &c.

H. A. BARR,
Att'y for Def't.

No. 4.

And for further plea in this behalf said defendant says that the Board of Supervisors of Carroll County was authorized by an act of the Legislature of Mississippi to subscribe for capital stock in the Greenville, Columbus, and Birmingham Railroad Company, for and in behalf of said county, and issue bonds therefor, only upon condition that two-thirds of the qualified voters of said county should vote in favor of such subscription; and the said Board of Supervisors did order an election to be held in said county
44 on the 1st day of April, 1873, at which the question of "subscription or no subscription" by said county of the capital stock of said railroad company was to be submitted to the qualified voters of said county. And said defendant avers that such electon was on that day accordingly held. And said defendant further avers that on the said 1st day of April, 1873, the names of 3,129 registered voters were on the registration books of said county, and there were in fact on the said last-mentioned date 3,129 qualified voters in said county, but that only 1,280 of said voters voted at said election, of whom only 918 voted in favor of the said proposition to subscribe for said stock, and 362 voted against it, as fully appears by the returns of the 3 registers of said county filed and deposited with the clerk of the said Board of Supervisors of said county, and at all times open to the inspection of all persons in the public office of the clerk of the chancery court of said county. And said defendant avers that the said registration of voters of said county was a book of record deposited and
45 kept in the public office of the clerk of the chancery court of said county as a record book, and open for inspection to all persons, and exhibited the fact there were 3,129 registered voters in said county at the time of said election. And said defendant avers that before the issuance of any of the bonds and coupons in the declaration mentioned, a bill was exhibited by citizens and tax payers of said county against the said Board of Supervisors in the chancery court of the said county of Carroll to restrain and enjoin

said Board of Supervisors from the issuance and delivery of the bonds of said county upon a subscription of stock in said railroad company; and thereupon an injunction was ordered and issued before the issuance and delivery of any of the bonds and coupons mentioned in the declaration restraining and enjoining the said Board of Supervisors from the issuance and delivery of such bonds.

And said defendant avers that the said bill of injunction was 46 sustained and made perpetual by the judgment and decree of the supreme court of the State of Mississippi. And said defendant says that, notwithstanding the issuance and pendency of said injunction, and notwithstanding the refusal of two-thirds of the qualified voters of said county to vote for said subscription for stock in said railroad company, the said Board of Supervisors fraudulently and illegally issued and delivered the bonds and coupons in the declaration mentioned in fact, for a subscription for stock in said railroad company. And this the said defendant is ready to verify. Wherefore it prays judgment.

H. A. BARR,
Att'y for Def't.

Filed Nov. 17th 1879. G. R. HILL, *Clerk.*

To the foregoing two last pleas on the 1st day of Dec. 1879, a demurrer was filed, which is in the words and figures following, to wit:

Demurrer to 3 and 4 Pleas.

District Court at Oxford, June Term, A. D. 1879.

DEWITT W. SMITH, Plaintiff,
vs.
BOARD OF SUPERVISORS OF CARROLL COUNTY. } 3312.

47 No. 3.

And the said plaintiff, as to the third plea of the defendant above set forth and pleaded, says, *precludi non*, because he says that the said pleas [are] not sufficient in law, and therefore he demurs to the same, and for cause of demurrer assigns—

1st. That said plea contains no matter or thing in bar of plaintiff's right to recover.

2d. The plea shows a valid election and a valid subscription in aid of the Greenville, Columbus, and Birmingham Railroad Company, as the subscription on the part of Carroll county to the capital stock of said railroad company, and alleges nothing in avoidance.

3d. The constitution of the State of Mississippi does not require the assent of two-thirds of the registered voters of the said county to the issuance of the obligations sued on, and the plea, on its face, discloses nothing in bar of the validity of the bonds described in the declaration, and the coupons thereunto attached and likewise described in the declaration.

4th. The said plea discloses an act of the defendant itself in the issuance of the obligations sued on, and the matter con-
48 tained in said plea is insufficient to bar the plaintiff's recovery on the obligations so issued by the defendant.

5th. Said plea is uncertain, informal, and otherwise insufficient.

Wherefore plaintiff prays judgment.

FRANK JOHNSON,
CHAS. B. HAWRY,
Attorneys for Plaintiff.

4.

And said plaintiff, as to the fourth plea of the defendant by it above pleaded says, *precludi non*, because he says that the said plea is not sufficient in law, and therefore he demurs to the same, and for cause of demurrer assigns—

1. That said plea contains no matter or thing whereby the plaintiff's right to recover is barred or precluded.

2. The plea shows a valid election and a valid subscription in aid of the Greenville, Columbus, and Birmingham Railroad Company, as subscription on the part of Carroll county to the capital stock of said railroad company, and alleges nothing in avoidance thereof.

3. The constitution of the State of Mississippi does not require the assent of two-thirds of the registered voters of the
50 said county to the issuance of the obligations sued on, and the plea on its face discloses nothing in bar of the validity of the bonds described in the declaration and the coupons thereunto attached and also described in the declaration.

4. It was not incumbent on thet plaintiff, in accepting the bonds and obligations sued on from the said railroad company, to examine into the particulars of the vote after the decision of the defendant that said bonds and obligations were lawfully issued.

5. The said plea, for any matter or thing therein alleged, does not constitute a defence to the action.

6. The said plea discloses an act of the defendant itself in the issuance of the obligations sued on, and the matter contained in said plea is insufficient to preclude plaintiff from maintaining his aforesaid action.

Wherefore plaintiff prays judgment.

FRANK JOHNSON,
CHAS. B. HAWRY,
Att'ys for Plaintiff.

Filed Dec. 1, 1879. G. R. HILL, *Clerk.*

51 And afterwards, to wit, on the 16th day of December, a day of the December term of said court, A. D. 1879, the following order was made in said cause, to wit:

Order.

DeWitt W. Smith
vs. } 3312.
Board of Supervisors of Carroll Co.

Came the parties, by their attorneys, and thereupon came on to be heard the motion of the defendant to withdraw the first plea to the declaration filed by said defendant, and the court, having considered the same, doth order that said motion be granted, and the said plea is permitted to be withdrawn, to which the plaintiff then and there excepted.

And afterwards, to wit, on the same day, to wit, 16th Dec., 1879, the same being a day of the regular December term of said court, A. D. 1879, the following judgment was had in said case, to wit:

Judgment.

DeWitt W. Smith
vs. } 3312.
Board of Supervisors of Carroll County.

52 Came the parties, by their attorneys, and thereupon came on to be heard the demurrer of the plaintiff to the third and fourth pleas of the defendant, and the court, having heard the argument of counsel, and considered the same, doth order that said demurrer to the said third and fourth pleas of the defendant be sustained.

It is therefore considered by the court that plaintiff have judgment in his favor for the sum of six thousand four hundred and forty-four $\frac{80}{100}$ dollars, amount of coupon sued on, with interest, together with his costs in this behalf expended, and that execution do issue for said sum.

Bill of Cost.

U. S. marshal's fees	$23 50
Attorneys' tax fee	10 00
Clerk's fees	63 45
	$96 95
Cl'k's cost for transcript, &c.	16 85
	$113 80

53 United States of America, *Northern District of Mississippi:*

I, G. R. Hill, clerk of the district court of the United States for said district, do hereby certify that the foregoing 52 pages hereto attached contain a full, perfect, and correct copy of the original papers and orders therein set out in said court as the same now appears of record and upon the file in my office, in the following cause, to wit: DeWit W. Smith *vs.* The Board of Supervisors of Carroll County.

In testimony whereof, I have hereunto set my name and affixed the seal of said court, at office, at Oxford, this the 7th day of September, A. D. 1881.

[SEAL.] G. R. HILL, *Clerk.*

54 *Petition for Writ of Error.*

To the Hon. R. A. Hill, judge of the district court of the United States court for the northern district of Mississippi:

Your petitioners, members of the board of supervisors of the county of Carroll, in the State of Mississippi, to wit, L. Tuttle, pres., D. L. Arnold, J. L. Holman, J. H. Smith, and J. A. Seale, show unto your honor that a judgment was rendered in the district court of the United States for the northern district of Mississippi, at Oxford, in favor of DeWitt W. Smith against defendants, as a board of supervisors of Carroll county, on the 16th day December, 1879, for $\$6,444\frac{80}{100}$, amount of certain coupons, with interest, and the costs of suit in a case in said court, No. 3312.

Your petitioners, being advised and believing that there is error in said judgment, pray for a writ of error to remove said cause to the Supreme Court of the United States, at the city of Washington, at its next court, to be heard and reversed upon a writ of error.

H. A. BARR,
Att'y for Petitioners.

To the clerk of the district court of the U. S. for the northern district of Miss., at Oxford:

Let a writ of error issue, as prayed for, this 6th June, 1881.

R. A. HILL, *Judge.*

Filed June 3, 1881. G. R. HILL, *Clerk.*

I, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the foregoing is a true and complete copy of the original pet. for writ of error, as the same appears on the files in said court.

Witness my hand and the seal of said court, at Oxford, Miss., this the 7th day of Sept., 1881.

[SEAL.] G. R. HILL, *Clerk.*

55 The United States of America, District Court of the United States for the Northern District of Mississippi.

The President of the United States to DeWitt W. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein the Board of Supervisors of Carroll county is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

56 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 6th day of June, in the year of our Lord one thousand eight hundred and eighty-one.

R. A. HILL,
Judge of the District Court of the United States for the Northern District of Mississippi.

57 I acknowledge service of the within notice. Waiving service by the U. S. marshal, and agreeing that the writ may be considered in all respects as served this day.

FRANK JOHNSTON.

Sept'r 22, 1881.

[Endorsed:] 3312. Board of Supervisors of Carroll Co., pl'ff in error, *vs.* D. Witt W. Smith, def't in error. Citation.

57½ Jackson, Miss., *Sept'r 22d*, 1881.

Mr. H. A. Barr, *Oxford.*

Dear Sir: I owe you an apology for my delay in acknowl[edg]ing service of the citation in the Carroll county appeal.

Enclosed you will find the citation, with service properly acknowledged.

Very truly yours, FRANK JOHNSTON.

58 *Writ of Error.*

United States of America.

The President of the United States to the Honorable Robert A. Hill, Judge of the District Court of the United States for the Northern District of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said district court before you, between The Board of Supervisors of Carroll County, in said district, plaintiff in error, and DeWitt W. Smith, defendant in error, a manifest error hath happened to the great damage of the said Board of Supervisors of Carroll County, plaintiffs in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with 59 this writ, so that you have the same at Washington, on the second Monday of October next, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 3d day of June, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] G. R. HILL,
Clerk of the Distrtct Court of the United States for the Northern District of Mississippi.

This writ is executed by affixing hereto a transcript of the record called for therein, and transmitting the same to the clerk of the Supreme Court of the U. S at Washington, as required.

G. R. HILL,
Clerk U. S. Dist. C't, N. D. Miss.

[Endorsed:] Board of Supervisors of Carroll Co., pl'ff in error, *vs.* DeWitt W. Smith, def't in error. Writ of error. Filed June 3, 1881. G. R. Hill, clerk.

Endorsed on cover: N. Mississippi D. C. U. S. No. 333. The Board of Supervisors of Carroll County, plaintiff in error, *vs.* DeWitt W. Smith. Filed 6th October, 1881.

111-556

IN THE

SUPREME COURT OF THE UNITED STATES.

BOARD OF SUPERVISORS OF CARROLL COUNTY, *Plaintiff in Error,* *vs.* DEWITT W. SMITH, *Defendant in Error.*	No.

Brief for Plaintiff in Error.

I submit the following brief on behalf of plaintiff in error, prepared by H. A. Barr, Esq., of Oxford, Miss. It is so full and complete in all respects that I will not add to or take from it in any respect.

STATEMENT OF CASE.

This action was brought by DeWitt W. Smith against the Board of Supervisors of Carroll County on coupons of bonds issued by said board on the 1st July, 1873.

On the 5th March, 1872, the Legislature of Mississippi incorporated the "Arkansas City and Grenada Railroad Company."

On the 4th March, 1873, the Legislature of Mississippi passed an act changing the name of said corporation to "Greenville, Columbus and Birmingham Railroad Company."

I append such portions of the above acts as are pertinent to this case.

Act of 5th March, 1872, incorporating "Arkansas City and Grenada Railroad Company:"

> "Sec. 19. *Be it further enacted*, That upon application by the president or other authorized agent of said corporation to the constituted authorities of any county, city or incorporated town in the State of Mississippi, or adjacent to the main line and branch railroad of this corporation, for a subscription to a specified amount of the capital stock of said corporation, said constituted authorities are hereby required, without delay to submit the question of "subscription" or "no subscription" to the decision of the qualified voters of said county, city or incorporated town, at a special or regular election to be held therein, and if two-thirds of said qualified voters be in favor of said subscription, the constituted authorities of said counties, cities or incorporated towns are hereby required, without delay, and are authorized and required to subscribe to the capital stock of said corporation to the amount agreed upon; and bonds of the county, city or incorporated town making the subscription, having such time to run and such rates of interest as may be agreed upon, shall be issued without delay by the authorities of the counties, cities or incorporated towns to the president and directors of said corporation to the amount of said subscription to the capital stock." * * *

Act of 4th March, 1873:

> "Sec. 1. *Be it enacted by the Legislature of the State of Mississippi*, That from and after the passage of this act, the "Arkansas City and Grenada Railroad Company" shall be known and designated as "The Greenville, Columbus and Birmingham Railroad Company," and by that name and style shall hereafter sue and be sued." * * *

The 1st plea was withdrawn, and no question now arises here upon it.

The 2d plea in substance alleges that the question of "subscription" or "no subscription" for capital stock in said corporation was submitted to the qualified voters at Carroll County on the 1st April, 1873; that there were on that day 3129 registered voters in the County; that only 1280 voted; that 918 voted in favor of subscription and 362 against it, and that the subscription was made and bonds issued on said vote.

The 3d plea is substantially the same as the 2d plea, and alleges additionally, that the fact that only 1280 persons voted at the election appears by the returns of the three Registers of the County filed and deposited with the Clerk of the Board of Supervisors of the County, and at all times open to the inspection of all persons in the public office of the Clerk of the Chancery Court of the County, and that the registration-book, showing that there were then 3129 voters in the County, was a book of record kept in the public office of the Clerk of the Chancery Court of the County, and at all times open for inspection to all persons.

The 4th plea is substantially the same as the 3d plea, and alleges additionally, that before the issuance of any of the bonds, a bill was filed by tax payers of the County against the Board of Supervisors enjoining them from issuing the bonds—that the injunction was made perpetual by the decree of the Supreme Court of the State—that during the pendency of the injunction and in violation thereof, the bonds were fraudulently and illegally issued.

A demurrer was sustained to each of these pleas. The ouly questions in the case is the correctness of the judgment of the court below, in sustaining the demurrer to these pleas.

Assignment of Errors.

1st. The court erred in sustaining the demurrer to the 2d plea.

2d. The court erred in sustaining the demurrer to the 3d plea.

3d. The court erred in sustaining the demurrer to the 4th plea.

Argument for Plaintiffs in Error.

The coupons sued on were attached to bonds, which recite that they "are a part of a subscription to the capital stock of the Greenville, Columbus and Birmingham Railroad Company, authorized by the following styled acts," giving the titles of the acts incorporating said Railroad Company. (See bond as set out in the declaration.)

The power to make the subscription and issue, the bonds was put upon the precedent condition, that two-thirds of the qualified voters of the County should vote in favor of the subscription. The act of the legislature expressly required a two-thirds vote of the qualified electors of the County.

Acts of Mississippi, 1872, page 347.

The Constitution of Mississippi, provides that "the legislature shall not authorize any county, city or town to become a stockholder in, or lend its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town at a special or regular election, shall assent thereto. Constitution, 1869, Sec. 14, Art. 12.

The Supreme Court of Mississippi has construed this section of the Constitution, and has held that the words "qualified voters" mean those who have been determined by the registrars as having the requisite qualifications by enrolling their names, and that the words "two-thirds" mean that number of the whole number whose names had been enrolled as legal voters.

Hawkins et al. vs. *Carroll County*, 50 Mississippi Reports, 735.

This case settles the invalidity of the bonds, as between the original parties.

It is now the settled doctrine of this court that when power is given to municipal officers to issue bonds upon a precedent condition, the condition must be complied with, but that the municipality may be estopped as to a *bona fide* purchase by recital of compliance with the condition on the face of the bonds.

It is not now held that the mere issuance of the bonds is an estoppel upon the municipality.

In *Pendleton County* vs. *Ames*, 13 Wallace, the court said:

> "When they make a subscription, and issue county bonds in payment, it may fairly be *presumed*, in favor of an innocent purchaser of the bonds, that the condition which the law attached to the exercise of the power has been fulfilled."

Again, in *Town of Coloma* vs. *Eads*, 2 Otto, 490 and 491, the court said that in *Knox* vs. *Aspinwall*, 21 How., 544, the decision rested upon two grounds, and after stating the first ground, to wit, that the mere issuance of the bonds was an estoppel, said "whatever doubts may have been suggested respecting its correctness to the full extent to which it has sometimes been announced, there should be no doubt of the entire correctness of the other rule," asserted in *Knox* vs. *Aspinwall;* and Mr. Justice BRADLEY, in a concurring opinion, said:

> "But a mere execution and issue of the bonds without such recital, is not, in my judgment, conclusive. It may be *prima facie* sufficient, but the contrary may be shown."

Of course, if the issuance of the bonds only raise a presumption that the condition has been complied with, or is only *prima facie* evidence of it, and the contrary may be shown, a plea that the condition was not complied with is good.

The bonds, in this case, state on their face that there were acts of the Legislature which authorized *a subscription for stock* in the Greenville, Columbus and Burmingham Railroad Company, but they contain no recital that two-thirds of the qualified voters of the county had assented thereto. The authority given by the acts of the Legislature did not go into effect until the assent of two-thirds of the voters of the county had been obtained. Of this every purchaser of the bonds had notice, because it was a part of the statute he was bound to take notice of. A purchaser, therefore, seeing no recital of a two-thirds vote of the county on the face of the bonds, would be put upon enquiry, and by reasonable diligence could have ascertained from the records of Carroll County that two-thirds of the qualified voters of the county had not assented thereto.

McClure vs. *Township of Oxford*, 4 Otto, 432.

In the case of *County of Warren* vs. *Marcy*, 7 Otto, 104, this court, in giving the result of former decisions of the court, says:

> "We have substantially held that if a municipal body has lawful power to issue bonds or other negotiable securities, dependent only upon the adoption of certain preliminary proceedings, such as a popular election of the constituent body, the holder in good faith has a right to assume that such preliminary proceedings have taken place, *if the fact be certified on the face of the bonds themselves*, by the authorities whose primary duty it is to ascertain it."

Surely nothing short of a distinct statement on the face of the bonds that the precedent condition has been complied with, ought to estop the county; for the rule is that estoppels must be *certain to every intent.* Bigelow on Estoppel, 304.

The demurrer to the 4th plea amounts to an admission that the bonds are void as between the original parties, and that the present holder does not occupy the place of a *bona fide* holder for value.

The issuance of the bonds without the requisite vote made them void as between the original parties.

Hawkins vs. *Carrol County*, 50 Mississippi R., 735.

The issuance of the bonds pending the injunction, and in violation of it, was an illegal act from which no legal right can flow.

Williams vs. *Cammack*, 27 Mississippi R., 224, 225.

The protection thrown around the holder of commercial paper, ceases when it is shown that it had its inception in illegality or fraud. The holder must then show that he is a holder *bona fide*, and for a valuable consideration. 1 Smith Leading cases 609 (Note to *Miller* vs. *Race*.

Smith vs. *Sac. County*, 11 Wallace, 147.
Commissioners vs. *Clark*, 4 Otto, 285.
Stewart vs. *Lanking*, 14 Otto, 509.
Buchannan vs. *Litchfield*, 102 W. S. R. 278.

J. Z. GEORGE
Att'y for Pl'tff in Error.

ED
MAR [illegible] 1884
KENNEY, Clerk.

111-556

Supreme Court of the United States.

OCTOBER TERM, 1883.

BOARD OF SUPERVISORS OF CARROLL COUNTY, *Plaintiff in Error*, *vs.* DE WITT SMITH, *Defendant in Error.*	No. 333.

Brief of L. B. VALLIANT,
Of Counsel for Defendant in Error.

Pierce Bros., Printers, 118 North Third Street, St. Louis.

Supreme Court of the United States.

OCTOBER TERM, 1883.

BOARD OF SUPERVISORS OF CARROLL COUNTY, *Plaintiff in Error,* *vs.* DE WITT SMITH, *Defendant in Error.*	No. 333.

BRIEF FOR DEFENDANT IN ERROR.

The brief of Mr. Howry, leading counsel for defendant in error, which I have seen, completely covers all the points in the case, but I am tempted to present some reflections on two points.

I.

The case of Hawkins v. Carroll Co., 50 Miss., 735, is the main reliance of the plaintiff in error.

It seems from the facts reported in that case, that Carroll County had subscribed for $125,000 stock in the railroad company, payable in county bonds; that a considerable amount of work in grading had been done in the county on the faith of the subscription, and $15,000 of the bonds had been issued by the Board of Supervisors of the county to the construction company by order of the railroad company (p.. 740), and after that, certain of the tax payers instituted the suit of Hawkins v. Carroll Co., *supra*, to enjoin the further issuance of the bonds, on the ground that two-thirds of all the persons in the county who were entitled to vote had not voted for the subscription.

The Supreme Court of Mississippi sustained the bill, and made the injunction perpetual.

That case should not be received as authority affecting the rights of any person not a party to that suit: for it was presented to the court on *an agreed statement of facts*, under which it was impossible for the court to have reached any other conclusion than it did.

In the agreed statement of facts on which that case was submitted for judgment, is the following, on page 739: "and it is admitted, as a fact proved, that on April 1, 1873, there were in Carroll County 2,000 to 2,500 qualified voters." And the opinion of the court seems to rest on that admission, for, on page 762, the court say:

"But in this case, in addition to the information contained in the registration books, it is admitted that there were from 2,000 to 2,500 qualified voters in Carroll County at the date of this election. The proposition submitted, received less than half of 2,000 votes, and, of course, did not have the assent of two-thirds as required by the constitution. The difficulty of proving the number of voters of the county has been obviated by this admission.

We are of the opinion, therefore, that this proposition to subscribe for stock did not receive the assent of the number of voters required by the constitution."

In other words, the constitution requiring that the proposition should receive the assent of two-thirds of the "qualified voters" and the agreed statement of facts admitting that there were 2,000 "qualified voters," the court decided that 918 was was not two-thirds of 2,000.

True, that opinion goes on to interpret the provision of the constitution now under consideration to mean that the subscription is not valid unless two-thirds of all those in the county who are entitled to vote give their affirmative assent to the subscription, but, under the fatal admission above quoted, that question was not left in that case, and the opinion thereon is extra-judicial.

The interest of the defendant in that case, which was the same defendant below in this case, was to be promoted by having the judgment go against itself.

The plaintiff in error here now claims the benefit of a decision rendered in a case in which it was sole defendant and interested in losing the suit, in which it made an admission of record against itself, which was decisive of the case.

That was a suit in which the tax payers of the county were plaintiffs, and the county sole defendant, the object of which was to annul a contract which the county had made with a third party, a contract which perhaps, the county had repented of after having made. Now it is a very significant fact that the railroad company, the only party really interested in defending the suit, was not made a party defendant, and no objections was taken to the bill on the ground of the ommission of the most interested party to the subject.

What would be thought of a bill or a judgment founded on a bill against a sheriff to enjoin a sale under an execution on the ground that the judgment was invalid without joining the judgment creditor as a party in the bill?

If a decision of the Supreme Court of Mississippi were authoritative authority in this court, we might feel bound to follow that decision now as far as it goes, but, under the circumstances; the questionable attitude of the defendant in that case, as shown by the report, if it is not authoritative, it can hardly be claimed to be persuasive authority.

But even if that decision declared the correct rule, or a rule that this court, in a like case, would feel bound to follow, yet it can have no application to this case.

There a court of equity interfered to restrain the defendant from issuing the bonds; here that same defendant is pleading the judgment in that case to invalidate negotiable bonds already issued, and in the hands of an innocent purchaser for value.

II.

When the court of last resort in a State has given a certain construction to a statute, or constitutional provision of the State, before the same has been construed here, this court within certain bounds feels constrained to follow the construction given by the State court.

But where the statute or constitutional provision is the same in two States, and this court has placed a construction on it from one State, and it afterwards comes up from the other State with a totally different construction placed upon it by its Supreme Court before the decision in this court, will this Court feel bound by the rule ~~court~~ above mentioned to follow the latter decision against its own reasoning and against its former decision?

I can well imagine that if the first case came to this court with a decision of the Supreme Court of the State whence it came, which was in conflict with the views of this court, but which, nevertheless, in observance of the rule above mentioned, this court felt constrained to follow, if the same question came as an original proposition from the other State this court might not feel bound by its former decision rendered, not in conformity to its own reasoning, but, as it were, under constraint.

But when its first conclusion was reached, not only in conformity with the opinion of the Supreme Court of the State whence it came, but as the conclusion of its own reasoning, I do not understand that this court would feel bound to follow a different rule of construction in the case supposed from the other State.

The provision of the constitution of Mississippi, which we are considering, is identical with that of Missouri, construed by this court in the case of County of Cass v. Johnston, 95 U. S., 360, and was, doubtless, copied from the Missouri constitution.

In that case this court reached its conclusion, not alone by following the Missouri decisions, but also as the result of its own reasoning.

Now, the court is asked to decide that the same language means one thing in Missouri and a totally different thing in Mississippi.

The bonds in question were issued, as the pleadings show, in April, 1874, but the case of Hawkins v. Carroll County, *supra*, was not decided unitl the October term, 1874, of the Supreme Court of Mississippi.

This court has never held that the construction placed by the Supreme Court of a state on one of its statutes should be so far respected by this court as to give to the decision a retroactive effect and render invalid a contract made before the decision was rendered, which contract, in the judgment of this court, was valid.

Douglass v. Pike Co., 101 U. S., 677, see pp. 686-7.
Burgess v. Seligman, 107 U. S., 20, see pp. 32-34.

L. B. VALLIANT,

Of Counsel for Defendant in Error.

ST. LOUIS, April, 1884.

APR 15 1884

111-536

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1883.

THE BOARD OF SUPERVISORS
OF CARROLL COUNTY,
Plaintiffs in Error,
vs.
DEWITT W. SMITH,
Defendant in Error.

No. 333.

BRIEF FOR DEFENDANT IN ERROR.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 47 AND 49 DEARBORN STREET.
1884.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1883.

THE BOARD OF SUPERVISORS
OF CARROLL COUNTY,
Plaintiffs in Error,
vs
DEWITT W. SMITH,
Defendant in Error.

No. 333.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This suit is brought upon coupons detached from certain bonds issued by Carroll County, Mississippi, on 1st day of July, 1873, and purchased by defendant in error before maturity without notice of any irregularities, which obligations were issued by plaintiff in error to meet and pay off the subscription of said Carroll County to the capital stock of the Greenville, Columbus & Birmingham Railroad Company.

On the 5th March, 1872, the Legislature of Mississippi incorporated the Arkansas City and Grenada

Railroad Company, empowering it to construct a railroad from some suitable point at or in the immediate vicinity of Grenada, in the County of Grenada, and State of Mississippi, to a point on the east bank of the Mississippi River, opposite, or as nearly opposite as advisable, to the town of Arkansas City, in the State of Arkansas, or such other point as might be selected by the company; also to construct branch to Greenwood, in the County of Le Flo and State of Mississippi; and the directors of the company were invested with the power to determine the amount of the capital stock, and to receive subscriptions for stock.

On the 4th of March, 1873, the Legislature of Mississippi amended the act to incorporate the Arkansas City and Grenada Railroad Company, changing the name of the road to "the Greenville, Columbus and Birmingham Railroad Company," and providing that all subscriptions of stock to, or bonds issued, voted or subscribed for, the benefit of the Arkansas City and Grenada Railroad Company should thereafter be made payable to and collectible by the Greenville, Columbus and Birmingham Railroad Company, and the title to all property of every description, and all the rights, privileges and franchises by law vested in the Arkansas City and Grenada Railroad Company were vested in and made appurtenant to the Greenville, Columbus and Birmingham Railroad Company.

On the 9th April, 1873, the Greenville, Columbus and Birmingham Railroad Company, was authorized by further act of the Legislature of the State of Mississippi, to apply for a vote from the several counties through which it might be located on the proposition to subscribe for stock as provided for in section 19 of the original charter, upon any condition as to the location of said road, or as to the retention by the counties of their bonds, or any portion of them, until the building of the road should progress in said county to any specified extent that might be agreed upon between the President of the company and the Board of Supervisers of each county; and said company, through its President and the Board of Supervisors of any such county, were authorized to agree upon the terms and conditions on which any vote of such county in favor of subscription should be binding on such county, and any such contract or agreement theretofore made, or thereafter made, should be binding on the parties.

The act to incorporate the Arkansas City and Grenada Railroad Company, approved March 5, 1872 (Acts of 1872, p. 347 *et seq.*), provided as follows, viz.:

Section. 1. Incorporated the certain persons therein named and constituted them a body politic under the name and style of "Arkansas City and Grenada Railroad Company," and conferred on them the power to make contracts, sue and be sued; to make rules and regulations, by-laws and ordinances, for the management and control of the company.

Sec. 2. Defined the purposes and objects of the company to construct and build, own and maintain a main trunk railroad upon such route as a majority of the board of directors might direct.

Sec. 3. Authorized the ownership of real estate, and the occupancy of State lands.

Sec. 4. Designated the manner of conducting the business of the corporation.

Sec. 5. Provided that officers be elected at first meeting, who should determine the amount of the capital stock, and provide a method for receiving subscriptions.

Sec. 6. Conferred the right upon the Company to enter upon and take all necessary land.

Sec. 7. Regulated disagreements in regard to land.

Sec. 8. Defined procedure under writs of *ad quod damnum*.

Sec. 10. Authorized contracts for lands for depots.

Sec. 11. Gave the right to use State lands.

Secs. 12 and 13. Provided for intersecting other roads and crossing highways.

Secs. 14 and 15. Authorized the purchase or lease of any other road, and conferred power to borrow money or purchase property ; and, after providing in Section 15 for the issuance of corporate bonds and notes, it was declared :

"And to secure the payment of said bonds and notes, may mortgage its railroad and branch, its capital stock, its corporate franchise, and any of its real and personal property, or any part or portion of the same; and it may by its President or other officers and agents, duly authorized by its directors, sell, dispose of or negotiate its capital stock (such capital stock being declared to be personal property and transferable as such), or any of its personal property, at such times and place, and at such rates and prices, for cash, property or services rendered the Company, either within or without the limits of this State, as in the judgment of the Company, or its directors will best advance its interests; and if such bonds, notes or stock are thus sold at a discount, such sale shall be in all respects valid and binding upon this Company, and such stock, bonds and notes shall be as valid for the par value thereof as if the same had been sold at par value.

Sec. 16. (Authorized the Company to obtain rights and privileges from cities and towns.)

Sec. 17. Provided for the Company to receive conditional donations of land.

Sec. 18. Directed the Company to be sued in manner and form like other corporations in the State.

Sec. 19. *Be it further enacted*, That upon application by the President or other authorized agent of said corporation to the constituted authorities of any county, city, or incorporated town in the State of Mississippi, or adjacent to the main line and branch railroad of this corporation, for a subscription to a specified amount of the capital stock of said corporation, said constituted authorities are hereby required, without delay, to submit the question of "subscription" or "no subscription," to the decision of the qualified voters of said county, city or incorporated town, at a special regular election to be held therein, and if two-thirds of said qualified voters be in favor of said subscription, the constituted authorities of said counties, cities, or incorporated towns, are hereby required without delay, and are authorized *and required* to subscribe to the capital stock of said corporation to the amount agreed upon; and bonds of the counties, cities or incorporated towns, making the subscriptions, having such times to run, and such rates of interest as may be agreed upon, shall be issued without delay by the authorities of the counties, cities, or incorporated towns, to the President and Directors of said corporation, to the amount of said subscription to the capital stock; an assessment shall be made upon the tax-payers of the counties, cities, and incorporated towns, making the subscriptions, to pay the principal and interest of said bonds so issued; and certificates of shares in the capital stock of said company shall be given to all persons paying taxes for the principal and interest of said bonds to the amount paid by them, whenever the sum of taxes so paid shall be equal to one or more shares of said capital stock; *Provided*, That before the bonds of any county, city or incorporated town, as before authorized, shall be issued and delivered to the said company, it shall be the duty of said company, through its President or agents, to give such security as shall be deemed sufficient by the constituted authorities of said county, city, or incorporated town, that the proceeds of said bonds shall be faithfully applied to the construction and equipment of said railroad and branch.

Sec. 20. Exempted the company from the State tax.

Sec. 21. Imposed the duty of transporting fertilizers along the line of the road free of charge, and to pay into the State Treasury one mill per mile for every passenger transported over the road.

Sec. 22. Declared no commissions should be allowed officers for taxes appropriated.

Sec. 23. Declared that the company should commence building the main stem of the road within three years from the passage of the act, under penalty.

Sec. 24. *Be it further enacted*, That this act shall be favorably and liberally construed, so as to favor all the purposes and the objects of the same, and the operations of the provisions thereof.

Sec. 25. Repeals all acts in conflict with this act.

and this act is made to take effect and be in force from and after its passage.

An Act to amend an Act to incorporate the Arkansas City and Grenada Railroad Company, approved March 5, 1872.

SEC. 1. *Be it enacted by the Legislature of the State of Mississippi*, That from and after the passage of this act, the Arkansas City and Grenada Railroad Company, shall be known and designated as "The Greenville, Columbus and Birmingham Railroad Company," and by that name and style shall hereafter sue and be sued, plead and be impleaded in any court of this State, and all subscriptions of stock to or bonds issued, voted, or subscribed for the benefit of the Arkansas City and Grenada Railroad Company, are hereby made payable to and collectible by the Greenville, Columbus and Birmingham Railroad Company, and the title to all property of every description and kind whatever, whether real, personal or mixed, and all choses in action, and all the rights, privileges and franchises, and immunities of whatever description, which by law hereto vested in, or appertained to the Arkansas City and Grenada Railroad Company, are hereby vested in and made appurtenant to the Greenville, Columbus and Birmingham Railroad Company, to be received, collected, and sold, transferred, held or enjoyed by said Company, under its said new name, as by law the said Company might have received, collected, used, sold, transferred, held or enjoyed under its original name of the Arkansas City and Grenada Railroad Company, it being the intention of this section of this act only to change the name of said Corporation, leaving all the rights and liabilities unimpaired.

SEC. 2. Conferred additional privileges upon the

Company, in constructing the road upon a different line through Carroll and the other counties named, with branches.

Sec. 3. Authorized the construction of bridges over certain streams.

Sec. 4. Provided for the election of Directors in person or by proxy.

Sec. 5. Made the Act take effect from and after its passage.

Approved March 4, 1873.

CONSTITUTION OF MISSISSIPPI.

ARTICLE XII.

Section 14. The Legislature shall not authorize any county, city or town to become a stockholder in, or to lend its credit to, any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a special election, or regular election to be held therein shall assent thereto.

No. 82. (Copy of Bond.) $500.

United States of America.
State of Mississippi—
Carroll County Bond.

July 1, 1873.

Know all men by these presents that the county of Carroll in the State of Mississippi, acknowledges itself indebted to the President and Directors of the Greenville, Columbus and Birmingham Railroad Company, or to the bearer hereof, in the sum of Five Hundred Dollars, which said sum the said County of Carroll in the State of Mississippi, promises to pay to the President and Directors of the Greenville, Columbus and Birmingham Rail Road Company, or to the bearer, at the —— National Bank of St. Louis, on or before the first day of July, in the year of our Lord 1893, with interest on said sum at the rate of eight per centum per annum payable semi-annually.

The above mentioned sum being a part of a subscription to the capital stock of the Greenville, Columbus and Birmingham Railroad Company, authorized by the following styled acts of the Legislature of the State of Mississippi, viz.: An act entitled "An act to incorporate the Arkansas City and Grenada Railroad Company," approved March 5th, A. D. 1872, and an act entitled "An act to amend an act to incorporate the Arkansas City and Grenada Railroad Company, approved March 6th, 1872," approved March 4th, A. D. 1873.

Carroll Chancery
Court,
Mississippi.

In testimony whereof the President of the Board of Supervisors of Carroll County and the Clerk of said Board have hereunto set their hands and seals, and the said Clerk has affixed the seal of his office this the 28th day of April, Anno Domini Eighteen Hundred and Seventy-four.

(Signed). H. S. Hill,
Pres. Board Sup. L. S.

(Signed). J. P. Marshall, Clerk. L. S.

ARGUMENT FOR DEFENDANT IN ERROR.

In support of the demurrers to the second, third and fourth pleas of the Supervisors, I submit the following propositions, to wit:

1. That the facts set forth in the pleas disclose a sufficient vote to authorize a subscription within the

meaning of the Constitution of the State of Mississippi.

2. That even if it should be determined that the vote was in itself insufficient, nevertheless the vote was declared sufficient by the Board of Supervisors, and the Board having ordered the bonds in question to be issued, with a recital therein that they were issued as a part of a subscription to the capital stock of the Railroad Company, authorized by the Acts of the Legislature incorporating the company (reciting the Acts by their titles), the obligations are in the hands of a *bona fide* holder for value, conclusive proof that all the precedent conditions were complied with, and the Board is estopped from any defense as to these preliminary questions of fact, and the bonds are binding on the county.

3. That as the bonds are negotiable in form, and as the declaration alleges that plaintiff below became the purchaser for value without notice (which allegation of fact goes without denial in the record), the presumption is that plaintiff's holding is *bona fide*, not only unaffected by the mistaken decision of the Board in the face of the recitals, but likewise unaffected as to the fraud of the Board, if there was any fraud in issuing and delivering the bonds pending the suit for vacating the proceedings of the Supervisors and preventing the issue of the obligations.

1. *That the vote was sufficient to authorize a subscription within the meaning of the Constitution of the State of Mississippi.*

The vote required was two-thirds of the "qualified voters" of the county. What constituted two-thirds of the qualified voters? Was it that number of those entitled to vote according to the registration books of the county, or was it two-thirds of those who, entitled to vote, actually did vote? The debatable ground began at this point.

At the time the obligations in controversy were issued, it was an open question in Mississippi as to what construction should be given to the terms "qualified voters."

It is true the Supreme Court of the State afterward passed upon the question, but the obligations in this suit had been put upon the market. Will this court follow the exposition given to the question by the State tribunal under the circumstances? That this court is not *concluded* by the decisions of State courts in any case where they are made *after* the bonds are issued and have been sold in the market. I refer to a statement of the doctrine showing that the question is open here still.

1 Dillon, Munic. Corp., §416.

In view of the fact that the obligations in this case were put on the market before the contrary rule was declared in *Hawkins* v. *The Supervisors*, 50 Miss. 739, I submit this question for decision, to this court. And without extending argument in the premises I beg to direct attention to a few familiar principles that seem to me worthy of consideration.

There are three canons of constitutional and statutory construction generally recognized.

1. That the words and clauses of statutes and constitutions are to be construed according to their ordinary acceptation.

2. That where a constitution is not entirely explicit in itself and requires construction, it ought not to be so construed as to cripple the government and render it unequal to the objects for which it was declared to be instituted.

3. That the construction of the instrument should be such as to give all of its provisions a distinct effect, if it be possible. 9 Wheaton, 1; *Smith* v *Halfacre* 6 How. 600 (Miss.) The rule at common law was "after an election has been proposed, whoever has a majority of those who vote, the assembly being sufficient, is elected. Although the majority of the assembly abstain from voting, their silence will be construed an assent to the majority of those who vote."

An. and Ames on Corp. §127:

In corporate bodies those who stay away are conclusively presumed to assent to what may be lawfully done by those who attend. 1 Dillon Munic. Corp. §215.

This rule has been extended in analogous cases. to questions propounded to be adopted or rejected by votes of the people. Dissent without a vote is of no avail. See the following cases, viz: St. Mary's Church case, 7 S and R. 517 (Penn.) *First Parish of Sudlem* v. *Stearns*, 21 Pick. 154; *Louisville and Nashville R. R. Co.*, v. *The County Court of Davidson et al.* 1 Sneed, (Tenn.) 638: *Taylor* v. *Taylor*, 10 Minn. 107; *People* v. *Warfield*, 20 Ill. 159; *People* v. *Garner*, 47 *id*. 246; *People* v. *Wiant*, 48 *id*. 263; and see also the opinion of this court in *St. Joseph Township* v. *Rogers*, 16 Wall. 644, construing the phrase "a majority of the legal voters of a township" as used in an Illinois municipal aid statute, and where Mr. Justice Clifford said "the court is of opinion that such is the true meaning of the enactment (that the intention was to require only a majority of the legal voters voting) as the question would necessarily be ascertained by a count of the ballot." And again, in the case of *County of Cass* v. *Johnston*, 95 U. S. 360, it was declared that all qualified voters who absent themselves from an election held on public notice duly given, are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares because there is no other practicable way in which the matter could be determined.

2. *That even if it should be determined that the vote was in itself insufficient, nevertheless the vote was declared sufficient by the board of supervisors, and the board having ordered the bonds in question to be issued, with a recital on their face that they were issued as a part of a subscription to the capital stock of the railroad company* AUTHORIZED BY *the acts of the Legislature incorporating the company (reciting the acts by their titles), the obligations are in the hands of a bona fide holder for value, conclusive proof that all the precedent conditions were complied with, and the board is estopped from any defense as to these preliminary questions of fact, and the bonds are binding on the county.*

The original Act incorporating the railroad, to construct which the bonds in this case were issued, invested the Boards of Supervisors of the various counties through which the road was to run, with full power to submit to the voters of their respective counties the question of subscribing to the stock of the Railroad Company, and to decide whether the election was properly held and the necessary vote cast in favor of the subscription. They were then authorized and required, without delay to subscribe to the capital stock of the Railroad Company, if two thirds of the qualified voters were in favor of this subscription; and it was then declared that "bonds of the counties making the subscriptions having such times to run and such rates of interest as may be agreed on, shall be issued without delay by the authorities of the counties, to the President and Directors of the Railroad Company to the amount of the subscription." So that in the issue and delivery of the bonds in question, the Board of Supervisors was the only tribunal under the terms of the Act having any authority to hold the election or to declare the result. The Supervisors were the proper judges as to whether or not two thirds of the qualified voters of the county had voted in favor of the subscription, and whether or not an election had been held properly, and the ascertainment of these preliminary questions of fact was necessarily left to the inquiry and judgment of the Board itself because no other tribunal was provided for the purpose.

Much has been said in this case, and will doubtless be repeated in this court, of the limited jurisdiction of boards of supervisors in Mississippi. In view of this it may be well for me to say, that in determining the scope of the powers of the boards of supervisors in Mississippi, the extent of their duties and jurisdiction, we are not bound in this case, by the extent of their powers and restricted jurisdiction as defined by the general laws of the State. The law incorporating the railroad company for which these bonds were issued imposed a special duty on these boards. The board of supervisors of Carroll County was one, from its organization and general duties, fit and competent to be the depository of the trust confided to it. The persons composing it were elected by the county, and it was already invested with the highest functions concerning its general police and fiscal interests. It was, and is, a body representing the county in its corporate capacity, and agents of the people as to the financial affairs of the county. In issuing the bonds to the railroad in this case, the supervisors were more than mere agents. They were the people of Carroll County taking a subscription and issuing the bonds for the subscription.

The supervisors occupied the precise position of the township trustees and the township clerk in the Salamanca Township Bond Case, 99 U. S. 504, and the same position occupied by the county court in the Scotland County case, 94 U. S. 682. As in these cases the officers were to all intents and purposes the township in its corporate capacity, and the county in its corporate capacity respectively, so in the case at bar the supervisors in determining the validity of the vote, making the subscription and issuing the bonds were to all intents and purposes the County of Carroll in *its* corporate capacity. It was the county by and through the supervisors as an official body making the subscription; it was the county acting for itself by and through her board of supervisors, delivering her bonds to the railroad company and inducing the construction of the railroad; and it was the corporation speaking for itself when by the orders and judgment of the board the conditions precedent to the subscription and issuance of the bonds were declared to have been fulfilled.

But if the board be considered as mere agents in the premises yet the question of the vote was a question of fact, just as all other questions of fact pertaining to the election were questions of fact, as notice, length of time given to the voters under the law to decide, appointment of the proper officers to hold the election and other conditions. The election was their exclusive affair. The supervisors canvassed the returns in council, and being a court as well as a *quasi* corporation, the presumption is, the minutes conformed to their decision. Required by law to keep a record of all their acts, their orders allowing accounts and claims are in the nature of judgments and such orders are final and conclusive as judgments until reversed on appeal.

> *Arthur* v. *Adam & Speed*, 49 Miss. 404.
> *Supervisors* v. *Arrighi*, 51 Miss., 668.
> *Klein* v. *Supervisors*, 54 Miss., 254, and other cases.

In the light of the provisions of the statute authorizing the subscription and regulating the duties of the board in that behalf, the case at bar presents some features not apparent in some of the cases decided by this court, where the counties and municipalities have been held liable. In order that the people and tax-payers should be protected upon the obligations of the county, the board had power to take security for the faithful application of the proceeds of the bonds to the construction and equipment of the railroad; and not only this, before any of the bonds could be issued or delivered to the railroad company, it became the duty of the company to give security that the proceeds of the bonds should be faithfully applied to the construction and equipment of the road. Not only this, but the law under which the obligations were issued expressly required that all the powers conferred in the statute should be favorably and liberally construed, so as to favor all the purposes and objects of the charter, and the operation of all the provisions thereof.

But no matter how restricted the powers and how limited the jurisdiction of boards of supervisors in Mississippi, a complete answer to the proposition that board of supervisors must strictly pursue the powers conferred upon them by law is found in the fact that inquiries into these irregalarities can not go beyond persons and rights involved in a *direct proceeding*. That the power to aid or engage in extra municipal enterprises must be strictly pursued according to the terms and conditions of the grant conferring it, is admitted in controversies which arise *before* the issue of the bonds between the tax payers, or municipality, on the one hand, and the company on the other. Ordinarily, their unauthorized representation that they have power to do an act is not binding upon the corporation; that is the question is as to their power, *in fact and in law*, not what they have represented it to be. The only exception to this rule, in addition to the one above suggested, to wit, where it is the sole province of the officers who issued the bond to decide whether conditions precedent have been complied with, is where both parties have not equal means of knowledge as to the extent and scope of their powers, and where the particular character of the commission and authority is, from its nature and circumstances, peculiarly known to the officer or agent; in which case the principal will, or may be bound by the false representations of the agent respecting his authority and its extent and scope. For this statement of the rule and the exception to it see:

1. Dillon on Munic. Corp. §419. p. 513.

The Board of Supervisors being invested with full power to submit the question of subscription to a vote, and to hold the election, canvass the returns and decide whether the election was properly held, and the requisite two-thirds had favored the subscription, and the bonds having been ordered to be issued, with a recital therein that they were a part of a subscription authorized by the statute, *specially designating that statute*, the bonds are in the hands of plaintiff below as a *bona fide* holder for value, conclusive proof that the subscription had received the sanction of two-thirds of the qualified voters, and the obligations are binding on the county.

Commissioners of Knox County v. *Aspinwall*, 21 How., 539; *Bissell* v. *City of Jeffersonville*, 24 *id.* 287; *Moran* v. *Commissioners of Miami County* 2 Black 722; *Van Hostrop* v. *Madison City*, 1 Wall, 291; *Grand Chute* v. *Wiregar*, 15 *id.* 355; *Lynde* v. *The County*, 16 *Id.* 6; *Kenicott* v. *The Supervisors*, *id.* 452; *St Joseph Township* v. *Rogers*, *id.* 644; *Town of Coloma* v. *Eaves*, 92 U. S. 484; *Marcy* v. *Town of Oswego*. *id.* 637; *Humboldt Township* v. *Long, et als.* *id.* 642; *County of Calloway* v. *Foster*, 93 *id.* 567; *Commissioners* v. *Thayer*, 94 *id.* 631; *Commissioners* v. *January*, *id.* 202; *Commissioners* v. *Clark*, *id.* 278; *Town of East Lincoln* v. *Davenport*, *id.* 801; *County of Cass* v. *Johnston*, 95 U. S. 368; *Mercer County* v. *Hackett*, 1 Wall. 92; *Galpecke* v. *City of Dubuque*, *id.* 203; *Venice* v. *Murdock*, 92 U. S. 494; *Converse* v. *City of Fort Scott*, *id.* 503; *Commissioners of Douglass County* v. *Bolles*, *id.* 104.

There are numerous cases decided by the highest courts of some of the states further illustrating the doctrine, and in one case in Mississippi the law was fully declared in the broadest language, so that if a purchaser was bound to know the *lex loci contractus*, as counsel on the trial below argued in discussing the limited powers of the supervisors, such purchaser had the law of the place in his favor.

City of Vicksburg v. *Lombard*, 51 Miss., 126.

In another case in Mississippi a distinction is taken as to the terms of the act conferring the power and to any misrepresentation or misinterpretation of it contained in the recitals. By this decision purchasers are bound to look to the act itself, conferring the power to see if the power exists, but in *all* matters of fact, constituting the conditions for the exercise of the power the recitals govern. There the purchaser may stop with safety.

Woodruff v. *Okolona*, 57 Miss., 810.

In view of this long array of authorities and repeated declaration of principles as applied to the class of cases named in the decisions, what is it that makes the case at bar exceptional and not within the principles set forth in the reported cases? Do the recitals in the bonds from which the coupons in suit are taken fairly import a compliance with the statute so as to preclude inquiry into the precedent conditions? Clearly they do.

"This bond is a part of a subscription to the capital stock of the Greenville, Columbus and Birmingham R. R. Company AUTHORZED BY the following styled acts of the Legislature of the State of Mississippi, viz.: "An Act to Incorporate the Arkansas City and Grenada R. R. Company," approved March 5, 1872, and an act entitled, "An Act to Amend An Act to Incorporate the Arkansas City and Grenada R. R. Company, approved March 5, 1872," approved March 4, 1873. In the judgment of the board then the bonds were *authorized by the law* which made provision for their issuance.

In the recent case of *School District* v. *Stone*, 16 Otto, 187, Mr. Justice Harlan delivering the opinion of the court said: Recitals, by such officers, that the bonds have been issued "in pursuance of," or, "in conformity with," or "by virtue of," or, by "authority of" the statute, import full compliance.

In *Hackett* v. *Ottawa*, 99 U. S. 96, it was said "whether such representations were made inadvertently, or with the intention, by the use of *inaccurate titles of ordinances* to arrest inquiry and thereby facilitate their negotiation in the money markets of the country, the municipality, both upon principle and authority, is cut off from any such defense.

In a recent case decided in the Circuit Court of the U. S. for Minnesota. (September Term, 1881), the bond recited, that it was "issued in pursuance of the authority given for that purpose by the laws of the State of Minnesota, and in compliance with a resolution of the board of supervisors of said town," Nelson, J., said. "The bonds on their face refer to the law under which power to issue them was given by the legislature, and this was sufficient. *Marshall v. Plainview*.

In *County of Moultrie v. Savings Bank* 92 U. S. 631, the bonds recited their issue to be "in conformity to the provisions" of the statute which gave the authority to issue them. Held, sufficient to preclude inquiry into the precedent conditions.

In *Kennicott* v. *Supervisors*, 16 Wall. 452, the rule was thus stated: "If an election or *other fact* is required to authorize the issue, . . . and the tribunal on behalf of the corporation issues the bonds with a recital that the fact exists or has taken place, this will be sufficient evidence of the fact to all *bona fide* holders of the bonds."

I might continue the references indefinitely, but I will stop here, only to recur to the leading case of

Knox v. *Aspinwall, supra,* where the bonds merely recited that they were issued *in pursuance of* the statute, which prescribed the condition precedent to any subscription, and therefore the Court said they imported a compliance with the law. And to say that we have brought the case at bar within the rule laid down by the Court in the more recent case of *Orleans* v. *Pratt,* 99 U. S. 676, in which case it is said that "where the bonds on their face *recite the circumstances which bring them within the power* the corporation is estopped to deny the truth of the recital."

Nor do the very few cases cited by the supervisors assert any different doctrine, as will be seen from an examination of those relied on. In *Buchanan* v. *Litchfield,* 12 Otto, 290, although for want of a recital that the bonds were issued in accordance with the constitution (as well as of the statute), the recitals were held insufficient, yet the court said "had the ordinance stated in any form (the ordinance only was referred to on the face of the bond, while there was a constitutional limitation upon the amount of indebtedness for which municipalities could contract), that the proposed indebtedness was within the constitutional limit * * * there would have been ground for holding that the city could not dispute the fair inference to be drawn from such statement."

So then, as it is a question of inference upon a fair construction of the phraseology of the recitals as to whether the words used import a compliance with the law, I pass to the act itself and to the consideration of the language used here.

No complaint is made except that the constitutinal two thirds vote is lacking. Now, in view of the statute being a reiteration of the exact words of the constitution with reference to the required vote, it became unnecessary for the recitals, to show that the bonds were issued by authority of the statute, and the constitution too as a recital that the bonds were authorized by the statute, is a distinct recital that they were authorized by the constitution as well. Had a purchaser examined the constitution he could have found nothing more than could have been found in the law, and a reference to the one was necessarily a reference to the other. Now there can not be any such thing as degrees of nullity.

The law recognizes no grades of nullity in declaring that an obligation is null and void. And let it be remembered that the same rules of construction are used in interpreting and applying statutes as are used in the construction and application of constitutions. Dwarris on Statutes, 655. So the constitutional requirement is no more binding in the case than the statute, and if the recital of the statute is sufficient to protect an innocent holder, then such holder is protected on every part of the ground. For the constitution is only a law, differing from a statute only in its paramount force in cases of conflict.

I have used the words "authority of" as synonymous with "authorized by," and ask what essential difference there is between a bond reciting that it was issued "by authority of" a statute, or "in pursuance to" a statute, or "in virtue of" a statute, and another bond declaring that it was "a part of a subscription authorized by" a statute, and referring in specific terms to the statute itself by its title and designating it by its legislative name? Is there any difference?

What reasonable prudent business man would say there was in the markets of the world where obligations like these are being constantly offered? The reference on the face of the bond is specific and not general. In pointing out the particular authority by its title, everything in the statute is as much a recital as the title itself. And the recitals here are fully within the requirements of pleading as applied to private statutes. Hence, the claim that the recitals in this case are not within the precedents, is unfounded and without merit. The distinction sought to be made is a mere play upon words; a distinction without a difference, and of a character requiring the application of that kind of critical acumen "that would distinguish and divide a hair, 'twixt south and south-west side." Such a construction would be too narrow and restricted, and entirely too technical to get money to build railroads. And while now the courts may *legislate* a different meaning to the words (and Lombard street must take the law as Westminster Hall declares it), yet when courts are asked to adopt the nicest criticism that can be applied, it might as well be remembered that the bonds served the purpose of enabling the railroad company to get the money and thus misleading the public.

If the doctrine of estoppel is a rule so salutary as to preclude evidence inconsistent with previous conduct, whether that conduct be a *representation* or *a concealment* of a material fact, then its application is demanded by the facts disclosed on the face of this record where the supervisors make a *representation* that the bond is authorized by the law which they particularly point out in their certificate, and where too there is a *concealment* of what the vote really was. Is it not fairly to be taken that the recitals here come up to the essential elements of estoppel by conduct in this, that when the paper was put on the market with the certificate set forth, it was put there with *the intention* that others should act on it, or that the certificate was so worded as to be calculated to induce a reasonable man to believe that the authority issuing the bonds had complied with the law? . Such is the law of equitable estoppel as applied in Missisippi.

Turnipseed v. *Hudson*, 50 Miss. 429.
Stratton v. *Bryant*, 55 Miss. 261.

A stronger instance of *general* estoppel can not be found than that declared by this court in *Van Hostrup* v. *Madison City*, 1 Wall. 291, where the bonds recited they were issued "in virtue of an ordinance of the city council," without reciting what ordinance it was. Under the law pertaining to agency, an authority, and a recital of the source of it, should be so construed as to include all necessary or usual means of executing the authority with effect. So, to the argument that the recitals must be certain to a certain intent, in order to import compliance with the law, I answer, that the supervisors' action is not before the court as upon a criminal indictment, and the strict rules of pleading, where crime is charged, do not apply on the ordinary statement of civil liability. For instance, a marriage certificate reciting that the marriage was *authorized by* the terms of a certain license necessarily imports that the marriage was solemnized "by authority of" or "in conformity with" the terms of the license.

A paper that recites that it was a part of a proceeding *authorized* by the law that called forth the paper and caused it to be issued, is a declaration that the paper was issued "in conformity with" the law that gave it being.

A bond issued *by authorization* of a law is the assertion of that law and nothing else for the correctness of the act.

The supervisors defend their action by referring to the source of their power. If the recitals of the bonds contain the statement that they are a part of a subscription authorized by a statute and which, but for the statute, the issuing power could not act, the recitals are enough to assure the world that in issuing the paper the supervisors were governed by the law conferring the power in all respects, and that everything which was necessary to be done had been done. The language used is not only a reference to the acts of the legislature but something more. It is a statement where an innocent purchaser is concerned, (as pleading in all cases), to be taken most strongly against the party making the assertion.

3. *That as the bonds are negotiable in form, and as the declaration alleges that plaintiff below became the purchaser for value, without notice (which allegation of fact goes without denial in the record) the presumption is that plaintiff's holding is bona fide, unaffected not only by the mistaken decision as to the requisite vote in the face of the certificate to the contrary, but likewise unaffected by the fraudulent conduct of the board in issuing and delivering the bonds, pending the suit restraining the supervisor's action in that behalf.*

The declaration alleges *in totidem verbis* that the defendant, in error is a purchaser for value without notice. The pleas of the supervisors make no denial of the fact, and no issue is joined on these allegations. On the other hand, the course of pleading set up by way of defense is a virtual admission of the *bona fide* holding of plaintiff below, so that, if plaintiff's holding is exceptional to the legal presumptions applied to the holder of any negotiable security before maturity, the pleas of the supervisors concede the presumptive character of our holding. These pleas allege the illegal action of the supervisors in issuing the bonds and placing them upon the market. They aver that the registration book containing the names of all the registered voters of Carroll county, was a book of record deposited and kept in the public office of the clerk of the Chancery Court of the county as a record book, and open for inspection to all persons, and that said book exhibited the fact of the vote, but this plea, as has been decided in Mississippi, would only hold good where taxpayers intervene and contest before the bonds have been negotiated to purchasers for value. The fourth plea of the board contains the admission of the plaintiff's holding for value. The plea is a charge of fraud upon the board.

The board charges itself with fraud. The Board of Supervisors of Carroll County charges the Board of Supervisors of Carroll County with fraudulently and illegally issuing *and delivering* the bonds and coupons in the declaration mentioned, in part for a subscription for stock in the railroad. The board thus defends for its own fraud; pleads its own wrong. Nor does it connect the plaintiff below with the wrong. The plea does not charge knowledge of the fraud on him. The averment is that a bill of injunction at the suit of some citizens and tax-payers of the county was exhibited against the board, in the chancery court of the county, to restrain and enjoin the issuance and delivery of the bonds of the county, upon a subscription of stock in the railroad company, and thereupon the injunction was ordered and issued before the issuance and delivery of the bonds and coupons in the declaration mentioned, enjoining the board from delivering the bonds, which injunction was afterwards made perpetual.

Notwithstanding which the Board fraudulently issued the obligations held by defendant in error, in part for a subscription to the Railroad Company. The plea fails to show any service of the restraining order before the issuance and delivery of the bonds. Neither does it appear from the plea what the allegations of the bill of injunction were. And while it does appear that the injunction on the Board was sustained, and afterward made perpetual by the Supreme Court of Mississippi, and use is made in the argument of the opinion of the Court making the injunction perpetual, (*Hawkins* v. *Carroll County* 50 Miss. 735.) I take the occasion to refer the Court to that case myself, particularly to that much of the opinion as pretermits any expression of judgment, where any of the bonds had been purchased by a *bona fide* holder for value. So that as to those bonds which had been delivered by the Board to the Company, and by the Company to its purchasers, the restraining proceeding cuts no figure whatever.

The disregard of the restraining order by the supervisors ought to have no more weight here than their misinterpretation of what constituted the legal vote. Acts done by a person or body contrary to injunctive process may as to third persons still be valid according to circumstances where the injunction is preliminary in its character and I take it that the enjoined obligations of a municipality are still valid and subsisting obligations in the hands of a purchaser for value without notice of the injunction the same as upon any defect or other irregularity not jurisdictional in character. To hold otherwise would be to put a premium upon dishonesty and fraud. But inasmuch as it is not alleged that the restraining order referred to was served upon the Board in the tax payer's suit before the issuance and delivery of the obligations sued on, the presumption is, that as to these obligations there had been no proceedings inaugurated npon the well known rule that the pleading must be taken most strongly against the pleader. Hence the plea fails in the object which it would seek to create, that because of the tax payers' suit the plaintiff below in this case was not an innocent purchaser.

So if the plea in this behalf is, even by implication, set up as a matter of notice it is insufficient. The doctrine of *lis pendens* has no application. While *lis pendens* is, in law, notice of every fact averred in the pleadings pertinent to the matter in issue or the relief sought, yet in order that the notice may attach, the property involved in the suit must be so pointed out in the proceedings as to warn the public that they intermeddle at their peril. It is shown in the record of *Hawkins* v. *Carroll County*, *sapra*, and recognized in the opinion of the court in that case, that a considerable number of the bonds of the county had been negotiated and delivered at the time of the injunction. As this is an admitted fact, and as the obligations are payable to bearer, and as the plaintiff below claims to have purchased for value without notice, and as, too, the supervisors do not deny the allegation, the plaintiff below is presumptively holding innocently and should be protected. Moreover a *lis pendens* begins from the service of the *subpœna*, and not from the filing of the bill or issuance of the writ.

Allen v. *Mandeville*, 26 Miss. 397; *Murray* v. *Ballou*, 1 John. Ch. 566–576; 2 Sugden on Vendors, (7th Am. ed.), 544; *Allen* v. *Poole*, 54 Miss. 333.

So in any view of the matter, there was not as to these obligations in the present suit a *lis pendens* which made Smith chargeable with notice of any complaint by the tax-payers of Carroll County against the validity of the bonds. Besides all this, a *lis pendens* has no application to commercial paper. The bonds were made payable to the company or to bearer, and it was thus intended they should possess the character of negotiability, and by the form in which issued and the mode adopted to give them circulation that the holder should be presumed to have acquired the obligation as commercial paper. It does not lie in the mouth of the Supervisors to deny now that they are liable according to their contract. If any wrong has been done, it is not only their misfortune but likewise their fault. The board is a corporation and let it be remembered it could only make itself liable *under seal*. And that this enlarged and unlimited negotiability which it has given to its obligations is one of its own creation done for a purpose, and that the county received its subscription.

Such bonds, with the interest coupons attached, are in the hands of such a holder as is shown here negotiable securities, having all the properties of commercial paper; and the doctrine of *lis pendens* is not applicable to them.

White v. *Vermont R. R. Co.*, 21 How. 575.
Moran v. *Commissioners*, 2 Black, 722.
Gelpecke v. *Dubuque*, 1 Wall. 175.
City of Lexington v. *Butler*, 14 Wall. 282.
St. Joseph Township v. *Rogers*, 15 Id. 644.
Humboldt Township v. *Long, et al.* 92 U. S. 642.
Commissioners v. *Clark*, 94 U. S. 278.
Cromwell v. *County of Sac*, 96 U. S. 51;
Craig v. *City of Vicksburg*, Miss.
National Bank of Washington v. *Texas*, 20 Wal. 72.
Ollcott v. *Supervisors*, 16 Wal. 16 Id. 678.
Winston v. *Westfeldt*, 22 Ala. 760.
2 *Powell on Mortgage*, 618.
Murray v. *Ballou*, 1 John. Ch. 566, which is the leading American case on the subject, and was said by Judge Bradley to deserve the careful study of every student at law.

The same doctrine was held and adjudged in *Stone* v. *Elliott*, 11 Ohio St. 252; *Mims* v. *West*, 38 Ga. 18; and *Listch* v. *Wells*, 48 N. Y., 585, overruling same case in 48 Barb. 637; and the same doctrine was finally and absolutely settled by this court in the case of *County of Warren* v. *Marcy*, 97 U. S. 96, and the question put at rest after a review of all the authorities.

Notwithstanding these authorities it is insisted in the case here that the *onus* is on the plaintiff below to prove his *bona fide* holding. Whether the allegations of the declaration to the effect that plaintiff below was an innocent purchaser for value without notice be surplusage in pleading or not, I will not stop to inquire, but resting the nature of his holding upon the *prima facie* presumption that he acquired the bonds for value at their date, I do deny that any circumstances have been shown which shift from the county the burden of proof or take from plaintiff the ordinary presumption of law in such cases.

In the first place, where a party is in possession of a negotiable instrument the presumption is that he holds it for value, and the burden of proof is on him who disputes it. It is true there is an exception to this rule, the exception being where the defects appear on the face of instrument, which does not exist here. Where no defects are apparent on the face of the instrument, possession, even without explanation, is *prima facie* evidence that the holder is the proper owner or lawful possessor of the instrument; and the settled rule is, that nothing short of fraud—not even gross negligence—is sufficient to overcome the presumption and invalidate the title of the holder, as inferred from his actual custody of the instrument. Title and possession are presumptively one and inseparable, and the presumption follows equally as strong that such title was acquired in good faith without notice of any equities when the instrument is not due. None of these propositions will be controverted. They have been substantially adopted by this court in several cases, and have become elemental.

Goodman v. *Simonds*, 20 How. 343.
Commissioners v. *Clark*, 94 U. S. 287.
2 Pars. on Bills and Notes, 438.

There are authorities which show that a holder of negotiable securities may be put to the proof of having paid value and of his *bona fides*, but these authorities are only in cases where the instruments were obtained by fraud or force, or were lost or stolen. The rule in this class of cases is, if such defense be established, that a presumption arises that the subsequent holder gave no value for it, and such presumption will support the plea that the holder is such without consideration until this presumption is rebutted by proof that plaintiff paid value for the instrument, in which event plaintiff is still entitled to recover. Where defendant shows *fraud in the origin or inception* of the bonds this will put plaintiff to the proof of showing his *bona fide* holding, and on this principle of law it is claimed upon the authority of some of the State courts, and on the authority of one or two cases in this court, that the *onus* is on the plaintiff below for this reason.

But no strong circumstances of fraud exist here as in *Smith* v. *Sac County*, 11 Wall. 139 (one of the cases cited), nor can the circumstances in the issue of the bonds at bar be likened to the case of *Stewart* v. *Lansing*, 104 U. S. 505. In the latter case *all* had notice of the *certiorari* which reversed the judgment appointing commissioners to execute the bonds. In the case of *Sac County*, *supra*, the county judge, who executed and delivered the bonds, was bribed. An examination of the cases asserting this principle will show that the difficulty had reference to *the consideration* of the obligations, and generally contravened some principle of public policy, such as obligations given in gambling transactions, and the like, and that these rules do not apply to the obligations of a municipal corporation having the power to issue bonds, and have done so, and in the exercise of the power have misrepresented the facts to the injury of the public.

Respectfully submitted,

D. W. Smith

~~Attorney for~~ *Defendant in Error.*

ADDENDA.

Since the above was prepared the last volume of the Supreme Court Reports has come to my hands. The question as to the burden of proof for irregularities in the conduct of an election, and the fraud necessary to constitute an exception to plaintiff's *bona fide* holding, is put at rest by the decision of the court in the case of *Pana* v. *Bowler*, 107 U. S. 540. The case at bar is within that decision.

D. W. Smi

~~*Attorney for*~~ *Appellee.*